

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
WINCHESTER DIVISION**

<b>DEBRA BROWN, et al.</b>	)	
<b>Plaintiffs,</b>	)	
<b>v.</b>	)	<b>Case No: 4:05-cv-67</b>
	)	<b>JUDGE MATTICE/CARTER</b>
<b>COFFEE COUNTY, TENNESSEE, et al.</b>	)	
	)	<b>JURY DEMAND</b>
<b>Defendants.</b>	)	

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<b>GREGORY J. MORGAN, et al.</b>	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>Case No: 4:06-CV-15</b>
	)	<b>JUDGE MATTICE/CARTER</b>
<b>COFFEE COUNTY, TENNESSEE;</b>	)	
	)	<b>JURY DEMAND</b>

**PLAINTIFFS' RESPONSE TO SHOW CAUSE ORDER**

On December 4, 2006, this Court entered a Show Cause Order ordering Plaintiffs to show cause why their Complaints should not be dismissed as to Defendant Jonathon Yott, Defendant Britney Hodge, Defendant Officer Trey, Defendant Officer Hobbs, and Defendant Paul Blackwell. On December 6, 2006, Defendants Jonathon Yott and Brittany Hodge filed their Answer to Plaintiffs' Amended Complaint in Case # 4:05-CV-67. On December 6, 2006, Defendant Jonathon Yott filed his Answer to Plaintiff Gregory Morgan's Amended Complaint in Case # 4:06-CV-15.

Plaintiff Gregory Morgan agrees that Defendants Paul Blackwell should be dismissed without prejudice from Case # 4:06-CV-15 as Defendant Blackwell was not the Jail Administrator at the time that Plaintiff Gregory Morgan sustained his injuries. Plaintiffs in Case

# 4:05-CV-67 agree that Defendants Officer Trey and Officer Hobbs should be dismissed without prejudice as Plaintiffs have been unable to identify these Defendants.

These cases should not be dismissed as to Defendant Jonathon Yott and Defendant Brittany Hodge as Plaintiffs have not failed to prosecute these actions; no prejudice has accrued to Defendants; and, there are less drastic sanctions available. Plaintiffs have prosecuted this case by conducting discovery including depositions of four of the Plaintiffs and five Defendants. Plaintiffs have also accumulated extensive medical records and documents from Defendants. Plaintiffs have continued to schedule depositions and currently have a deposition scheduled for January 17, 2007.

A dismissal for failure to prosecute is reviewed under an abuse of discretion standard. *Stough v. Maryville Cmty. Schc.*, 138 F.3d 612 (6<sup>th</sup> Cir. 1998). In reviewing a dismissal for failure to prosecute, the reviewing court considers the following four factors-(1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the opposing party was prejudiced by the dismissed party's actions; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were considered or imposed prior to dismissal. *Knoll v. Am. Tel. & Tel. Co.*, 176 F.3d 359 (6<sup>th</sup> Cir. 1999).

In the case *subjudice*, Plaintiffs had concerns regarding insurance coverage and service of process that impeded Plaintiffs' ability to seek a default judgment. Nor is there any guarantee that obtaining a default judgment would not lead to more litigation and more delay of this action. See *Burrell v. Henderson*, 434 F.3d 826 (6<sup>th</sup> Cir. 2006). Further, there is no prejudice to Defendants on this issue. Defendants, with the exception of Defendant Blackwell, Officer Trey, and Officer Hobbs, have answered the Amended Complaint and Plaintiffs agree that Defendants

Blackwell, Officer Trey, and Officer Hobbs should be dismissed without prejudice. Obviously, there are less drastic sanction than dismissal available to the Court, should the Court wish to sanction Plaintiffs. For these reasons, this Court should not dismiss Plaintiffs' Complaints.

Respectfully Submitted,

/s/ James Baum  
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Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing was served on Jeffrey M. Beemer, Esquire, Stewart, Estes & Donnell, Financial Center Suite #1401, 424 Church Street, Nashville, TN 37219 by ordinary mail or electronic transmission on this the 21st day of December, 2006.

/s/ James L. Baum  
James L. Baum

